Substantially, they admit that there is no conflict between the statutes here involved, *except* in the one particular that prosecutions for violations of the federal acts are to be in the federal courts, whereas prosecutions for violations of the local act are in the local courts. Otherwise, there is no substantial claim at all of any possible conflict between the statutes. As is said, for example, in the *Pyramid Products* brief (pp. 13-14):

> "as to the offense charged in the information, a conspiracy in restraint of trade, the local statute is copied almost *verbatim* from the corresponding section of the Sherman Act. Except as to jurisdiction over violations, the two statutes are identical. They designate as a misdemeanor exactly the same act, which is the precise act described in and charged by the information in this case. It cannot be denied that the language of the information properly charges an offense under the language of either Act. The punishment provided by the two statutes for that offense is the same. The only difference is that Congress gave jurisdiction over that offense to the Federal District Court, while the local Act gave jurisdiction over the offense to the Insular District Courts."

Respondents do not claim that the statutes conflict in any way, **in the sense that they prescribe any different rules of conduct for the citizen.** There is no claim that the local statute attempts, as it is phrased in one of the respondents' briefs (*Texas Co.*, p. 13) to "prohibit(s) what the other act permits; that one act says 'Go' where the other says 'Stop'." *Nothing of that kind is here involved.* As the insular Supreme Court of Puerto Rico expressly said in its opinion in the *United Theatres* case (47 P. R. Dec. 725, 734; *Spanish edition;* quoted, Appendix II, p. 75, of our original "Brief for Petitioner" here), in this respect there is here "no conflict between the local law and the federal statute".

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date the local law, finds no support in the authorities. No authority is cited in support of it.

Respondents, however, insist that there is nevertheless a procedural "conflict" here, in that prosecutions for violations of the local law are to be in the local courts, whereas prosecutions for violations of the Acts of Congress are in the "federal courts",—here, in the so-called federal district court for Puerto Rico.

But that procedural difference is not the kind of "conflict" that this court appears ever to have had in mind in any of the cases dealing with conflicts between local territorial (or state) laws and federal laws. Neither this court nor the Congress has ever intimated that it considered such a procedural difference as a "conflict" invalidating a local territorial (or state) law. The "conflict" in mind has always been a substantial, substantive, thing *relating to the rights or duties or liabilities of the citizen.* This court has defined such "conflict", in its opinion in *Gulf, Colorado & Santa Fe Ry. Co.* v. *Hefley,* 158 U. S. 98, 103 [*quoted in our "Brief for Petitioner"*, p. 37]:

> "The question is * * * *whether their enforcement may expose a party to a conflict of duty.* It is enough that the two statutes operating upon the same subject matter *prescribe different rules.* In such case one must yield, and that one is the State law." (*Italics supplied*)

That is the test. It is not a procedural matter; but is one of substantive law; of the rights and duties and liabilities of the citizen.

A. But the respondents say that a prosecution under the local statute may "oust" the federal District Court of jurisdiction. They say, in substance (for example, *Texas Co. brief,* p. 14) that:

> "To argue that both may remain is to establish a state of confusion and uncertainty in which the federal authorities may oust the insular courts of jurisdiction by prosecuting first in any particular case, or *vice versa*

> the insular authorities may oust the federal court of jurisdiction by proceeding first. Such sort of concurrent jurisdiction over an identical offense against two laws where there exists only one sovereignty would have to be conferred by plain federal statutory language."

But that is unduly to emphasize a supposed purpose of the Congress to concentrate in the federal courts all prosecutions for offenses of this class, — *a supposed purpose which the Congress itself has nowhere emphasized,*—and is to violate the ordinarily accepted canons of statutory construction.

Respondents argue as though the Congress had directed that offenses of this class should be "exclusively" prosecuted in the federal courts; and as though that were a matter which the Congress had considered of importance. But the word *"exclusively" does not appear at all in this connection,* either in the Sherman Act or in the Clayton Act; nor does any similar word. The language used by the Congress is simply the ordinary phraseology defining the offenses (Sec. 3, Sherman Act; Secs. 2, 3, Clayton Act; *Appendix I, pp. 63, 64, "Brief for Petitioner"*), and leaving jurisdiction of prosecutions to be determined by the ordinary rules of procedure vesting in the federal courts jurisdiction over prosecutions under federal statutes. (*confer infra,* p. 9). *There are no negative or prohibitive words whatever.* Certainly no express prohibition by the Congress against prosecutions in the local courts for the same or similar acts, if made offenses under the local laws.

B. The situation here is, therefore, exactly analogous to that in the *Grafton* case [2], where, likewise, jurisdiction to try soldiers for violation of the Articles of War [federal

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[2] *Grafton* vs. *United States,* 206 U. S. 333. See our *"Brief for Petitioner"*, p. 44.

laws] had been vested by the Congress in the federal court, the Army Court Martial.[3]

Respondents question the analogy, because they say [*for example, the Pyramid Products brief*, p. 26] that, under the [old] 62nd Article of War then in force,

> "the court martial was trying not an offense against an Act of Congress but an offense committed by a soldier in violation of the local statute."

But respondents are mistaken. Under the [old] 62nd Article of War enacted by the Congress (now substantially re-enacted in the present 96th Article; Act of June 4, 1920, 41 Stat. 759, 806-807), the federal tribunal, the Army court martial, is invested with jurisdiction to try military personnel for "crimes" against the United States "and all disorders and neglects" "to the prejudice of good order and military discipline." The 62nd Article was a part of the revision of the Military Code enacted by the Congress in 1874 (U. S. Rev. Stats., Sec. 1342, Art. 62). It read:

> "Art. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison, or field-officers' court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."[4]

Of the construction of the phrase "all crimes" as used in that Article, Colonel William Winthrop, the recognized au-

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[3] "*Exclusively*"; just as much as jurisdiction to try alleged violations of the federal anti-trust statutes is vested in the federal courts. The Congress has not used the word "*exclusively*", nor any similar word, in either case.

[4] Quoted by this court in *Grafton* v. *United States*, 206 U. S. 333, 341-342.

thority on military law in the United States, says (*Winthrop's Military Law and Precedents* (2nd ed., 1895) Chapter XXVII, p. 1119; *War Department reprint,* 1920, p. 721):

> "The term 'crimes', in its ordinary sense, imports in the language of Bishop" [1 Crim. Law. Sec. 32] "'those wrongs which the government notices as injurious to the public, and punishes in what is called a criminal proceeding in its own name'. As employed in the present article, where it is evidently to be distinguished as indicating a separate class of acts from the 'disorders and neglects' next named, this word is understood to refer to the crimes—felonies other than capital and misdemeanors—**created or made punishable by the common law or the statute law of the United States.** The civil crimes,—when and *provided* as will presently be more particularly noticed, they are committed under circumstances rendering them prejudicial not only to good order but also to military discipline,—**the article constitutes military offenses** and authorizes their trial and punishment by military courts."

And so, in dealing with the [old] 58th Article[5] (U. S.

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[5] Article of War 58 of the Revision of 1874 (U. S. Rev. Stats., Sec. 1342, Art. 58) read:

> "Art. 58. In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, manslaughter, murder, assault and battery with an intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Territory, or District in which such offense may have been committed."

It is quoted by this court in *Grafton* v. *United States, supra,* 206 U. S. 333, 341.

Rev. Stats. Sec. 1342, Art. 58; *the analogues of which in the present Revision of 1920 are Articles of War 92 and 93, Act of Congress of June 4, 1920, Chapter II, 41 Stat. 759, 805*), Colonel Winthrop says (*Winthrop's Military Law and Precedents, supra,* 2nd ed. 1895, Chap. XXIII, p. 1040; *War Department reprint* of 1920, p. 671):

> "*To be defined by the common law.* It is to be observed that as these crimes are not specifically defined in the Article, or elsewhere in the written military law, they are to be interpreted by the doctrines of the *common law,* each being viewed as the common-law offense of the same name."

As to the definition of the crime of manslaughter under that 58th Article, Winthrop says (*ibid,* 2nd ed. 1895, Chap. XXIII, p. 1045, *War Department reprint* of 1920, p. 674):

> "*Manslaughter.* This crime is defined as an *unlawful killing without malice aforethought express or implied.* It is this absence of malice aforethought which distinguishes manslaughter from murder; its commission being ascribed to the 'infirmity of human nature,' and not to a depraved or wicked heart". [Citing common-law authorities].

In the *Grafton* case it was this *common-law offense* of manslaughter, viewed in the light of an act "to the prejudice of good order and military discipline" under the (old) 62nd Article of War, for which Grafton was tried by the federal court, the Army court-martial, as for an offense against federal law. And this court said in that case (*Grafton* vs. *United States, supra,* 206 U. S. 333, 354):

> "An offense against the United States can only be punished under its authority and in the tribunals created by its laws".

It is true that this court in that case quoted (at p. 343) the definition of "homicide" contained in Article 404 of the Philippine penal code, as was necessary in order to show that the common-law crime of manslaughter for which Grafton had been tried before the Army court-martial was substantially the same thing as the crime defined by the local Philippine code for which he was sought to be prosecuted in the local courts and to show that such prosecution before another court of the same sovereignty, the United States, would constitute "double jeopardy" under the rule, as stated by this court in its opinion there (206 U. S. at pp. 350-351), quoting from *Bishop, Criminal Law,* 7th ed. Sec. 1050, that:

> "It is not necessary, to establish the defense '*autrefois acquit*' or 'convict,' that the offense in each indictment should be the same in name. If the transaction is the same, or if each rests upon the same facts between the same parties, it is sufficient to make good the defense."

But even if what this court said in the *Grafton* case could be read as meaning to overturn the established rules of the military courts, and to hold that the court-martial, in trying prosecutions for "crimes" under the (old) 62nd Article of War, was to consider itself bound by the local definition of the particular "crime" made by the local statute law of the particular locality in which the court-martial happened to be sitting at the time, or in which the soldier had happened to commit the crime, yet the effect would remain the same, so far as concerns the questions here at issue. The "crime" for which the federal court-martial tries the soldier still remains the "crime" or offense against the United States, which the Act of Congress (the Article of War) clothes the federal court-martial with jurisdiction to try, none the less if the court-martial is to look to the local law for the *definition* of the particular crime, instead of to the common-law.

C. In the federal anti-trust laws, the Sherman Act of 1890 and the Clayton Act of 1914, there is no provision whatever expressly vesting any federal court with jurisdiction of prosecutions for violations of these statutes.

The jurisdiction of the federal district courts over prosecutions for such offenses is implied, simply, from the general rule that, as this court phrased it in the *Grafton* case as above quoted (206 U. S. 333, 354):

> "An offense against the United States can only be punished under its authority and in the tribunals created by its laws."

Jurisdiction in *civil cases only* "to prevent and restrain violations of this act" was expressly vested by section 4 of the Sherman Act of 1890 in the old circuit courts of the United States, and has been automatically, by the judicial code, transferred to the present district courts (Appendix I to our *"Brief for Petitioner,"* p. 63); and likewise by the Clayton Act of 1914 jurisdiction in *civil cases only* was expressly given by section 15 of the act to the United States district courts "to prevent and restrain violations of this act" (Appendix I, *"Brief for Petitioner,"* p. 66). But the Congress has ***nowhere expressly vested the federal courts with jurisdiction of criminal prosecutions under these acts;*** —far less "exclusively", as respondents insist. Apparently the Congress has never considered it necessary or desirable thus to emphasize in any such way this procedural matter. It has been content to leave jurisdiction of these cases to the operation of the general rules of procedure.

D. As pointed out in our *"Brief for Petitioner"* (Point XX, pp. 58-61) **the long continued and apparently unanimous and unbroken legislative interpretation put upon the various organic acts for the Territories, both by the Territorial legislatures and by the Congress itself, in relation to this question, indicates that it has never been the legislative thought that this mere procedural difference,** that offenses against acts of Congress are prosecuted in the

federal courts, while offenses against acts of the local legislature are prosecuted in the local courts, **constitutes any such "conflict" between the local and the federal laws as to require invalidation of the local law.**

As this court said in *Davis* v. *Beason,* 133 U. S. 333, 341 (quoted on page 11 of our *"Brief for Petitioner"*) the same acts (*e. g.,* bigamy and polygamy) may be "crimes by the laws of the United States *and* * * * crimes by the laws of Idaho" Territory; and, as this court held in the *Grafton case,* may be prosecuted in either aspect before the courts of either jurisdiction, with no danger of double jeopardy, because both sets of courts are held under the same sovereignty of the United States, and whichever of these two sets of United States courts first takes jurisdiction may retain jurisdiction to the end of the prosecution, and its final judgment of acquittal or of conviction will be a bar to prosecution in the other of these two sets of parallel United States courts.

E. It is established, of course, that in Puerto Rico the two sets of courts established by the two parallel sections (Secs. 40 and 41) of the Organic Act for the Island,—Section 40, the Supreme Court of Puerto Rico and the other so-called "insular courts", and Section 41 the so-called "federal" district court)—*are all alike really federal agencies,*—Congressional courts. The so-called United States District Court for Puerto Rico *"is in no sense a constitutional court of the United States",* but is *"a mere territorial court";* and is, in reality, no more a "federal court" than are the so-called "insular courts". It is just another kind of Congressional court, as they are. *Romeu* vs. *Todd,* 206 U. S. 358, 368; *Balzac* vs. *Porto Rico,* 258 U. S. 298, 312.

F. *Respondents' fear* that in practical effect recognition of concurrent jurisdiction in this respect between these two sets of Congressional courts may cause confusion or may operate to "oust" the so-called federal district court of jurisdiction, or *vice versa,* is far fetched.

The initiation and control of the prosecution in either court is in the hands of an "officer of the United States" (*United States* vs. *Germaine*, 99 U. S. [9 Otto] 508; *United States* vs. *Mouat*, 124 U. S. 303, 307) appointed by the President by and with the advice and consent of the United States Senate.

Section 13 of the Organic Act for Puerto Rico, Act of March 2, 1917, 39 Stat. 951, 955, as amended by the Act of February 18, 1931, 46 Stat. 1168, provides that the Attorney General of Puerto Rico

> "shall be appointed by the President, by and with the advice and consent of the Senate of the United States";

and Section 14 of the same Organic Act provides (Act of March 2, 1917, 39 Stat. 951, 956):

> "Section 14.—That the Attorney General shall have charge of the administration of justice in Puerto Rico".

Section 41 of the same Organic Act provides (Act of March 2, 1917, *supra*, 39 Stat. 951, 965):

> "Section 41.—That Puerto Rico shall constitute a judicial district * * *. The President, by and with the advice and consent of the Senate, shall appoint one district judge, * * *. There shall be appointed in like manner a district attorney, whose salary shall be * * *."

It is not to be expected that these two Presidential appointees, the insular attorney general and the district attorney, both "officers of the United States" (*United States* v. *Germaine, supra*; *United States* v. *Mouat, supra*) will indulge in unseemly races for jurisdiction between themselves, or will work otherwise than in substantial harmony in forwarding the general policies of the President and of the Department of Justice of the United States in selecting

the forum in which any particular offense or class of offenses is to be prosecuted.

G. Respondents still persist (*e. g., Pyramid Products brief,* pp. 22-24) in misunderstanding the reasoning of the Montana, Wyoming, Utah, and Oklahoma courts in the cases under discussion here, although none of the respondents' briefs makes any attempt at a direct answer to what is said on this head in "Point XIX,—B" (pp. 51-55) of our *"Brief for Petitioner"*.

II.

The local insular statute bears substantially the same relation to the Act of Congress that a corporate by-law bears to the provisions of the charter, or the resolutions of an executive committee to those of the board of directors or of the stockholders, or the ordinances of a city council to the acts of a State legislature. (Point XVIII, pp. 45-47 of our *"Brief for Petitioner"*)

Respondents do not deny the correctness of this statement in our brief; and one of the briefs for respondents (*Shell Co.*, p. 17) emphasizes it, and says:

> "Perhaps the closest analogy to the situation of legislation by the Congress and territorial assemblies is that of legislation by states and municipalities."

It has been established at least for more than a century, ever since the decision in New York, in 1828, of the leading case of *Rogers* v. *Jones*, 1 Wend. 237, 261-262, that municipal ordinances or by-laws may validly repeat and re-enact provisions along exactly the same lines as provisions contained in the State statutes, and may add supplementary provisions, *so long as such ordinances or by-laws do not conflict* with the State statutes or with the corporate charter. In *Rogers* v. *Jones* it was held, in relation to an ordinance of the village of Oyster Bay concerning fisheries, that it was no objection to the validity of the ordinance that the State legislature had enacted a statute along the same lines, it

appearing that there was *no conflict between the ordinance and the statute;* the court saying (at pp. 261-262) that the municipality might validly, by ordinance or regulations, *add to* the statutory provisions.

This case has frequently been cited by text writers and annotators, as well as by the courts; and is believed to embody the established rule.

The case which the *Shell Co. brief* cites (p. 17) of *Southport* v. *Ogden,* 23 Conn. 128, is not to the contrary. In that case, decided in 1854, it appeared that there was, in the court's opinion, a direct *conflict* between the ordinance there in question and the State statute. There was a State statute prohibiting taking oysters between April and November. The City of Southport passed an ordinance purporting to prohibit taking oysters between the months of May and October, only. The court pointed out (at page 133) that there was here a clear conflict; that the city ordinance, if given effect, would so change the effect of the State statute as to render it nugatory within that city during the months of April and November. The two could not stand together.[6] They *"prescribed different rules"*.

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[6] The Connecticut court in that case seemed, like the Arizona court in the *Alexander case,* and like some of the other Territorial courts in the decisions under discussion in the present case, uncertain as to whether or not there might be "double jeopardy", if prosecutions might be had for the same wrongful act either under the State statute or under a local ordinance. But, in a later case, the Connecticut court clears up that question (*State* v. *Flint,* 63 Conn. 248, 251), and arrives at the same conclusion stated by this court in the *Grafton case, supra,* that there can be no "double jeopardy"; that, since the act, in whatever aspect it be viewed, whether prosecuted as a violation of the local ordinance, or as a violation of the State statute, is, in either event, an offense against the same single sovereignty,—in Connecticut, the sovereignty of the State;—and, therefore, cannot be made the basis of a second prosecution in any event.

III.

The question whether or not the federal anti-trust statutes are to be considered as in force in Puerto Rico goes to the jurisdiction of the court; and is, therefore, open in this court.

As was said in the "Summary of Argument" (pp. 8-9) in our "Brief for Petitioner", it is perhaps immaterial for the purposes of this case whether the federal anti-trust statutes are to be considered as applicable to Puerto Rico and in force there, or not; because, as we there said,

> "If they do not extend to Puerto Rico then, of course, they do not in any way affect the validity of the local anti-trust act of the Legislature, and there can be no question of the validity of that act. If, on the other hand, the federal anti-trust acts are to be considered as in force in Puerto Rico, then the validity of the local anti-trust act of the Legislature likewise remains unaffected, for the reasons" stated in that brief, and here.

The question has, however, never been decided by this court. It is a serious question, of wide public interest; it is believed to be open to the court in this case; and it is submitted that it should be considered with the other questions in the case.

Some of the petitioners suggest that this question raised in Point II of petitioner's brief (p. 14), viz: "It is doubtful whether the anti-trust act of 1890, the 'Sherman Act', should be considered as extending to Puerto Rico," is not open for consideration by this court.

A—In the brief of respondents The Shell Co. (P.R.) Ltd. Vidal, Noonan, Zorrilla and Smith ("Summary of Argument," p.4) it is suggested that petitioner is foreclosed from contending, as it does in Point II of its brief (pp. 14-27), that the Sherman Act does not extend to Puerto Rico, offering, *inter alia,* as reasons for the foreclosure, that

"the question was not raised in the petition for certiorari nor presented to the Circuit Court of Appeals, *nor referred to in any of the decisions below*". (*Italics supplied*).

B—In Point I (p. 9) of the brief of respondents Pyramid Products, Inc., Yates, Becke and Cabra it is urged as a reason why "the question of whether the Sherman Act is in force in Puerto Rico is not open to petitioner," that this question was not

"raised in the Court below or passed upon by that Court in the judgment which is the subject of the present review. *The Circuit Court of Appeals did not decide this question* because it was not before it". (*Italics supplied*).

The statements contained in the italicized portions of the quotations in A and B above from two of the briefs of respondents to the effect that none of the courts below passed upon the question whether the Sherman Act is in force in Puerto Rico, are in error as will appear by reference to the following:

1. *"Judgment" of the district court of San Juan* sustaining the demurrers (R. 27), wherein, in substance, it is decided that the local statute is not in force in Puerto Rico, because the Sherman Act is in force there.

2. *Opinion of the Supreme Court of Puerto Rico,* on the motions to dismiss the appeal of the People of Puerto Rico (R. 36-45), wherein it was said:

"We have declared that the Sherman Act is not locally inapplicable, and therefore that it is in force in Puerto Rico" (R. 38).

"The act of Congress covers the entire ground of the local statute, and we must necessarily confirm our decision in ***United Theatres, Inc., supra,*** * * *" (R. 41)

[Note—That case held that the Sherman Act was in force in Puerto Rico. The opinion is set out in Appendix I (pp. 23-33) of the brief of respondents, The Texas Co. (P.R.) *et al*, and pertinent portions of it in Appendix II (pp. 73-75) of our "Brief for Petitioner".]

3. *Opinion of the Circuit Court of Appeals* (86 F. (2d) 577; R. 49-61) affirming the judgment of the Supreme Court of Puerto Rico.

After referring to section 14 of the Organic Act for Puerto Rico, and the Sherman Act, and quoting from section 1 of the Clayton Act, the Court said (86 F. (2d) at p. 579; R. 52):

> "We think that *Congress understood*, at the time of its enactment of the Clayton Act, *that the Sherman Act had previously been extended to and was in force in Puerto Rico* and that it intended the Clayton Act should be extended and in force there also. It thus appears that *the Sherman Act was in force in Puerto Rico in 1907, when the local act, upon which this prosecution is based, was passed, and manifestly so on and after October 15, 1914, and when this prosecution was begun on May 28, 1934. Having reached this conclusion*, the question remaining to be considered is whether the Act of March 14, 1907, was superseded or invalidated by the Sherman Act of 1890". (*Italics supplied.*)

It thus appears that each of the lower courts did give consideration to the question whether the Sherman Act is in force in Puerto Rico.

C—Further contention is made in the briefs referred to above that this question is not an open one in this court because it was not (a) specified in the petition for certiorari, nor (b) raised in the Court of Appeals, and (c) because petitioner in the Circuit Court of Appeals conceded that the "Sherman Law" did extend to Puerto Rico.

These objections are considered untenable for the following reasons.

(a) With reference to the lack of specifications in the petition for certiorari, attention is invited to the following:

> "The single question presented is whether or not the local anti-trust act, of the Legislature of Puerto Rico, approved March 14, 1907," [citing *United Theatres, Inc.* v. *District Court of San Juan,* set out in appendix II to the petition] "is a valid statute". (*Petition* p. 2.)

The above assertion would seem to be sufficiently broad to include any question pertaining to the validity of the statute. However it is true that no specific reference is made in the petition to the question whether the "Sherman Act" extended to Puerto Rico. No such specification would seem necessary where, as here, the case involves the jurisdiction of the district court of San Juan to try respondents for a violation of a local statute.

The demurrers of respondents to the amended information specifically raised the question of jurisdiction by alleging with reference to the district court of San Juan, "That this court has no jurisdiction to entertain this proceeding". (R. 6, 8, 11, 12, 15, 17, 20, 22, 25). The demurrers were sustained, as it appears, largely on the authority of the decision by the Supreme Court of Puerto Rico in *The United Theatres, Inc.* v. *District Court of San Juan, supra.* ("Judgment", R. 27), which case, as has been seen, gave full consideration to the question whether the "Sherman Act" extended to Puerto Rico.

The Court of Appeals also treated the case as one involving a jurisdictional question, for it asserted "There can be but one conclusion and that is that the act of 1890 preempted the ground or superseded the local act relating to the same matter, and that the *island district court was without jurisdiction* of the offense" (R. 58; 86 F. (2d) 577, 582; *italics supplied*).

It is a general rule that the question of jurisdiction of the subject matter is always an open one and may be raised at any stage of the proceedings. As has been seen, the question was raised initially by respondents themselves, in the insular district court; it was considered by the Supreme Court of Puerto Rico and by the Circuit Court of Appeals; and the petitioner believes the question to have been erroneously determined below. The question whether the district court of San Juan had jurisdiction of the offense with which respondents were charged is still the fundamental question for consideration by this court; and no specification in the petition for certiorari of any particular theory which petitioner might believe would support the jurisdiction of the local court should be required.

None of the cases cited to this point by respondents The Shell Co. (P.R.) Ltd., Vidal, Noonan, Zorrilla, and Smith, under paragraph (1) of point I of their "Argument" (pp. 5-6), involved, as here, the jurisdiction of the lower court to try an accused for a criminal offense.

Certainly in a criminal case, lack of jurisdiction could be urged without specification—since the question is always open—and the converse should be equally true—that there is jurisdiction, and in either case this court could decide the question upon such theories—though not presented by counsel—as it deemed proper.

(b) Though the question was not specifically raised in the Circuit Court of Appeals, it was, as has been seen, considered by that court.

(c) So far as any concession that the Sherman Act extended to Puerto Rico is concerned, it should not prevent this court from giving consideration to that question in deciding the fundamental question of jurisdiction of the district court of San Juan to try the respondents for violation of the local statute. The question is as acute here as it would have been if the local court had held that it had jurisdiction and if a record of conviction were under consideration.

IV

The fact that the congress has not annulled any of these Territorial statutes [*the local act of Puerto Rico, here involved, has stood for thirty years*] **is some evidence, at least, that the Congress has considered them validly enacted, under the delegated powers of those legislatures.** *Clinton* v. *Englebrecht,* 13 Wall. 434; *Tiaco* v. *Forbes,* 228 U. S. 549, 558; *Myers* v. *United States,* 272 U. S. 52, 175; *Fajardo Sugar Co.* v. *Holcomb,* 16 F. (2d) 92, 96.

CONCLUSION

The decision of the Supreme Court of Puerto Rico, affirmed by the Circuit Court of Appeals for the First Circuit, was wrong. Their judgments should be reversed, and this case remanded to the insular District Court of San Juan for further proceedings.

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